
OLR Bill Analysis

sHB 6442

AN ACT CONCERNING THE APPOINTMENT OF COUNSEL AND GUARDIANS AD LITEM IN CHILD PROTECTION MATTERS, AND THE APPOINTMENT OF PERMANENT LEGAL GUARDIANS.

SUMMARY:

Children who are subjects of abuse and neglect litigation generally have an attorney to represent their wishes (legal interests) and a guardian ad litem (GAL) to represent their best interests. In Connecticut, the law currently requires the child's attorney to simultaneously perform both functions, creating a conflict when the child's legal choices contradict what the attorney determines are in his or her best interests. In cases where there is a conflict, current law allows the child's attorney to notify the court and the court to appoint a separate GAL.

The bill requires the attorney to act solely in the child's legal interests. It narrows the circumstances when courts appoint GALs and sets up new procedures for paying them, limiting their court responsibilities, and subjecting them to cross-examination.

The bill also creates a "permanent legal guardianship" in Superior Court as an alternative living arrangement for abuse and neglect victims. It makes similar changes regarding Probate Court procedures to expand this arrangement to reach the same population.

The bill contains a relative visitation provision covering relatives of abused or neglected children who are already under protective supervision, transferred to legal guardianships to a person or agency other than the Department of Children and Families (DCF), or transferred to a permanent legal guardianship by Juvenile Court order. It provides that when disputes arise, they must be heard and resolved by a family court judge assigned to hear divorce cases.

Finally, the bill adds as an option for abused and neglected children placement in the custody of the parent or guardian with protective DCF supervision subject to court-ordered conditions.

EFFECTIVE DATE: October 1, 2011

§ 1 — ATTORNEYS AND GUARDIANS AD LITEM

Appointment of Attorneys

Under the bill, the chief child protection attorney (CCPA), rather than the judge, assigns attorneys to represent children in abuse and neglect proceedings. Judges can still appoint them based on immediate need. In either case, the judge must give the parties advance notice of the assignment or appointment.

When a child who needs representation in an abuse or neglect case is already represented in an ongoing probate or family matter, the judge can appoint that attorney to represent the child in the abuse or neglect matter. He must notify the CCPA when he does this. The appointed attorney must be knowledgeable about representing such children.

The bill thus narrows the circumstances under which a GAL is appointed. Under current law, he or she is appointed automatically at the beginning of every abuse and neglect case (with the child's attorney fulfilling both roles) and a GAL being appointed as soon as a conflict arises between the child's wishes and legal interests. Under the bill, GALs do not serve in all cases.

Appointment of a GAL

Under the bill, either the court or the child's attorney can determine that the child cannot adequately protect his or her best interests. If the attorney then determines that following the child's legal wishes could lead to substantial physical, financial, or other harm, the child's attorney may ask, and the judge may order, that a separate GAL be assigned. The court must either appoint a volunteer or notify the CCPA to assign one. A GAL already representing the interests of the child in another matter cannot be selected in the current matter (if it is

determined that appointment of a GAL is necessary).

Role of a GAL

By law, the GAL need not be an attorney but must be knowledgeable about the needs and protection of children. The bill additionally requires that a GAL be knowledgeable about relevant court procedures. The bill eliminates provisions requiring the GAL to (1) act in conformity with the Rules of Professional Conduct (which do not regulate non-attorney conduct) and (2) speak on behalf of the child's best interests. The bill instead requires the GAL to perform an independent investigation and to present at any hearing information pertinent to the court's best interests determination. He or she may be cross-examined at opposing attorney's request.

Removal of Attorney for Cause

By law, when a GAL is appointed in a case, the child's attorney generally continues to represent the child's legal interests unless the court finds good cause for removal. Under the bill, when such good cause is found, the judge must notify the CCPA and CCPA, rather than the court, must assign a different attorney.

Fees

Currently, the law requires the court to pay attorneys and GALs when the parents or the child's estate cannot do so. Under the bill, the CCPA pays the fees unless the parents, guardian, or child's estate are able to pay. When some ability to pay is established, the court must assess the rate and the CCPA may seek reimbursement from the parents or the estate.

§§ 2 & 4 — GUARDIANSHIPS

The bill expands the court options for placing children found to have been abused or neglected by adding the option of permanent legal guardianship. With some small differences, it permits the arrangement to be established in either the Superior or Probate court. Under the bill, the arrangement established in the Superior Court is called a permanent legal guardianship; in the Probate Court it is a permanent guardianship. (For ease of reference, unless the context

requires otherwise, we refer to both arrangements as a “permanent legal guardianship.”)

Definitions

Guardianship. Under the bill, the probate definition of guardianship applies to both Superior and Probate courts. It means guardianship of the person of a minor and includes:

1. the obligation of care and control;
2. the authority to make basic decisions affecting the minor’s education and welfare, including consent determinations regarding marriage, enlistment in the armed forces, and major medical, psychiatric, or surgical treatment; and
3. upon the death of the minor, the authority to make decisions concerning funeral arrangements and the body’s disposition.

Permanent Legal Guardianships. Under the bill, a permanent legal guardianship is a legal guardianship that establishes a permanent legal arrangement between a child or youth and a person who has been caring for a child or youth for at least one year. It is intended to last until age 18 without termination of the child’s or youth’s parental rights.

In Probate Court, a “permanent guardianship” is a guardianship that is intended to endure until the minor reaches the age of majority without termination of the parental rights of the minor’s parents.

Appointment Standard – Clear and Convincing Evidence

Under the bill, before appointing someone legal guardian, either the Probate or Superior court must find by clear and convincing evidence that the arrangement is in the child’s or youth’s best interest. There is a rebuttable presumption in Superior Court that granting a permanent legal guardianship to a relative who has been taking care of a child is in the child’s best interests, which is the same as current law’s presumption upon revocation of parental rights.

Under the bill, the court must additionally find that at least one statutory ground exists for terminating parental rights. Finally, the court must also find the following:

1. adoption is not possible or appropriate;
2. if the child or youth is (a) at least age 12, he or she consents, or, (b) under 12, the proposed guardian is either a family member or already serving as permanent legal guardian of at least one sibling;
3. the child or youth has lived with the proposed guardian for at least one year; and
4. the proposed legal guardian is (a) a suitable and worthy person and (b) committed to remaining the legal guardian and assuming the rights and responsibilities for the child or youth until he or she reaches age 18.

Permanent Legal Guardians – Removal

The bill permits the Probate Court to open or modify a permanent legal guardianship order when a motion to do so is filed by anyone other than the parent. It must hold a hearing at which it finds by a preponderance of evidence that the person is no longer suitable and worthy. If the arrangement is terminated, the court must adopt the standards described above in appointing a different permanent guardian.

Parental Reinstatement as Guardian

In addition to making parents ineligible to petition for the removal of a permanent legal guardian, the bill makes them ineligible for reinstatement as guardian in Probate Court after a permanent legal guardian has been appointed. However, the rights of a parent whose guardianship rights have been removed may be reinstated if a permanent guardian is unable to continue to serve. The court must find the arrangement to be in the child's best interests and that the factors that resulted in the parent's removal as guardian have been resolved satisfactorily.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/14/2011)